

## AMENDED AND RESTATED JOINT LAND USE AGREEMENT

THIS AMENDED AND RESTATED JOINT LAND USE AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Merced, a California Charter Municipal Corporation (“City”) and Kiwanis Club of Greater Merced (“Club”). In 1957, the Club built and has continuously maintained Kiddieland in Applegate Park. In 2015, the Club established the Kiwanis Club of Greater Merced Foundation, a California Non-Profit Corporation, to provide funding support for the Club’s Kiddieland operations and to support the greater Merced Area’s children and youth. This Amended and Restated Joint Land Use Agreement supersedes the original Agreement dated March 18, 1957. The City and Club hereinafter may be referred to collectively as the “Parties”.

WHEREAS, it is the desire of the Parties to promote and enlarge the recreational facilities for children in the City of Merced;

WHEREAS, the Club has purchased certain playground equipment;

WHEREAS, the Club desires to operate and maintain such equipment and retain the proceeds therefrom until such time as the obligation of the Club for the purchase of said equipment is paid; and,

WHEREAS, it is the desire of the Parties that such equipment be installed in Applegate Park in the City of Merced.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. That the Club may install such playground equipment as they have heretofore purchased and, with the consent of the City, the equipment they may hereafter acquire at Applegate Park in the area heretofore designated by the parties as established in Exhibits A and B, attached hereto.

2. Insurance Requirements.

a. Commercial General Liability

(i) The Club shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office

form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. The Club's general liability policies shall be primary and not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction projects, an endorsement providing completed operations coverage for the additional insured, ISO form CG 20 37 (or equivalent), is also required.

- (ii) Any failure to comply with reporting provisions of the policies by the Club shall not affect coverage provided the City.
- (iii) Coverage shall state that the Club insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (iv) Coverage shall contain a waiver of subrogation in favor of the City.

b. Business Automobile Liability

- (i) The Club shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01 (or equivalent) with a limit of no less than one million dollars (\$1,000,000) per accident.

c. Workers' Compensation and Employers' Liability - Statutory

- (i) The Club shall maintain Workers' Compensation Insurance and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). The Club shall submit to City,

along with the certificate of insurance, a waiver of subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

- (ii) Proof of Worker's Compensation is not required if the Club provides written verification that they have no employees.

d. All Coverages. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Club under this Agreement.

- (i) Each insurance policy required by the Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.
- (ii) All self-insurance, self-insured retentions, and deductibles must be declared and approved by the City.
- (iii) Evidence of Insurance - Prior to commencement of work, the Club shall furnish the City with certificates, additional insured endorsements, and waivers of subrogation evidencing compliance with the insurance requirements above. The Club must agree to provide complete, certified copies of all required insurance policies if requested by the City.
- (iv) Acceptability of Insurers - Insurance shall be placed with insurers admitted in the State of California and with an AM Best rating of A- VII or higher.

3. The Club shall retain title and ownership of all of such playground equipment until the obligations incurred in the purchase, maintenance and operation thereof shall have been fully paid and satisfied.

4. At such time as all of the obligations incurred herein by the Club shall have been fully paid and satisfied, the Club shall assign, transfer and convey to City all of its right, title and interest in and to said playground equipment.

5. Until such time as the Club's interest in said equipment shall be conveyed to the City, the Club shall maintain and operate said equipment and shall retain all the proceeds from the operation thereof.

6. The Club shall have the right to install, maintain and operate such concession stands for the sale of soft drinks, candy, sandwiches and similar items at such playground site for as long as it may desire and retain the proceeds therefrom, PROVIDED HOWEVER that said right shall terminate and end at such time as such equipment is conveyed to the City or removed by the Club as herein provided.

7. In the event that the Club may deem it economically inadvisable to continue the operation of said equipment prior to its transfer to the City, it shall have the right to remove all of said equipment and sell the same to pay such obligations the Club may have incurred herein. In that regard it is expressly understood and agreed that all of said equipment is and shall remain personal property during the term of this Agreement.

8. In the event that the City should elect to discontinue the use by the public of such playground equipment, prior to its transfer to the City by the Club, then in that event, the Club may continue to operate and maintain the same at its then location for at least two years from the date of the receipt of such notice from the City.

9. At all times during the term of this Agreement the Club shall keep the area of operation in a clean condition and in the event said equipment is removed by the Club, it shall remove the same in a proper and workmanlike manner and leave the park surface in reasonable the same condition as when received, reasonable wear and tear excepted.

10. The Club shall as soon after the close of each calendar year during the term of this Agreement, as is practicable, and at least once each year, furnish to the City a financial statement with reference to the operation of such playground equipment.

IN WITNESS WHEREOF, the parties have caused this Amended and Restated Joint Land Use Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
D. Scott McBride  
City Manager

ATTEST:  
D. SCOTT MCBRIDE, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk


APPROVED AS TO FORM:  
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 5/6/2024  
City Attorney Date

ACCOUNT DATA:  
M. VENUS RODRIGUEZ, FINANCE OFFICER

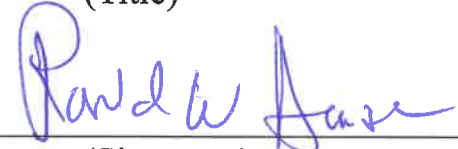
BY: \_\_\_\_\_  
Verified by Finance Officer

KIWANIS CLUB OF GREATER  
MERCED FOUNDATION, INC.,  
A California Non-Profit Corporation

BY:   
(Signature)

Karen D. Adams  
(Typed Name)

Its: President  
(Title)

BY:   
(Signature)

Ronald W. Hansen  
(Typed Name)

Its: Vice President  
(Title)

Taxpayer I.D. No. \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

TELEPHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

**SITE PLAN FOR:**  
**KIDDELAND TRAIN PATH**  
**MERCED, CALIFORNIA**

NOTE: ALL OF LOTS 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, 198, 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 258, 260, 262, 264, 266, 268, 270, 272, 274, 276, 278, 280, 282, 284, 286, 288, 290, 292, 294, 296, 298, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 320, 322, 324, 326, 328, 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000, 1002, 1004, 1006, 1008, 1010, 1012, 1014, 1016, 1018, 1020, 1022, 1024, 1026, 1028, 1030, 1032, 1034, 1036, 1038, 1040, 1042, 1044, 1046, 1048, 1050, 1052, 1054, 1056, 1058, 1060, 1062, 1064, 1066, 1068, 1070, 1072, 1074, 1076, 1078, 1080, 1082, 1084, 1086, 1088, 1090, 1092, 1094, 1096, 1098, 1100, 1102, 1104, 1106, 1108, 1110, 1112, 1114, 1116, 1118, 1120, 1122, 1124, 1126, 1128, 1130, 1132, 1134, 1136, 1138, 1140, 1142, 1144, 1146, 1148, 1150, 1152, 1154, 1156, 1158, 1160, 1162, 1164, 1166, 1168, 1170, 1172, 1174, 1176, 1178, 1180, 1182, 1184, 1186, 1188, 1190, 1192, 1194, 1196, 1198, 1200, 1202, 1204, 1206, 1208, 1210, 1212, 1214, 1216, 1218, 1220, 1222, 1224, 1226, 1228, 1230, 1232, 1234, 1236, 1238, 1240, 1242, 1244, 1246, 1248, 1250, 1252, 1254, 1256, 1258, 1260, 1262, 1264, 1266, 1268, 1270, 1272, 1274, 1276, 1278, 1280, 1282, 1284, 1286, 1288, 1290, 1292, 1294, 1296, 1298, 1300, 1302, 1304, 1306, 1308, 1310, 1312, 1314, 1316, 1318, 1320, 1322, 1324, 1326, 1328, 1330, 1332, 1334, 1336, 1338, 1340, 1342, 1344, 1346, 1348, 1350, 1352, 1354, 1356, 1358, 1360, 1362, 1364, 1366, 1368, 1370, 1372, 1374, 1376, 1378, 1380, 1382, 1384, 1386, 1388, 1390, 1392, 1394, 1396, 1398, 1400, 1402, 1404, 1406, 1408, 1410, 1412, 1414, 1416, 1418, 1420, 1422, 1424, 1426, 1428, 1430, 1432, 1434, 1436, 1438, 1440, 1442, 1444, 1446, 1448, 1450, 1452, 1454, 1456, 1458, 1460, 1462, 1464, 1466, 1468, 1470, 1472, 1474, 1476, 1478, 1480, 1482, 1484, 1486, 1488, 1490, 1492, 1494, 1496, 1498, 1500, 1502, 1504, 1506, 1508, 1510, 1512, 1514, 1516, 1518, 1520, 1522, 1524,

Exhibit B: New Train Path with Fenceline Expansion to Accommodate ADA Entry

